

Appln. No.: 10/645,942
Amdt. dated 10/22/04
Reply to Office Action of 10/05/04

REMARKS

Claims 1-32 are pending. Claims 5, 6, 11, 13, 16, 17 and 20-32 are withdrawn as being directed to a non-elected species of invention, but may be further considered upon allowance of a claim generic to all species. Claims 1, 3, 7, 9-20, 24 and 26-32 are amended. Claims 1-4, 7-10, 12, 14, 15, 18 and 19 currently remain for consideration.

Claims 1-4, 7-10, 12, 14, 15 and 19 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 5,209,007 to Southerland, Jr. (hereinafter "Southerland"). The rejection is traversed and reconsideration is respectfully requested.

Southerland is directed to decorative accessories for fishing lures and more particularly, to removable eyes for resilient plastic lures such as flexible plastic simulated worms, crawfish, lizards and the like. In a first preferred embodiment the removable eyes are characterized by spherical simulated eye members of selected size, shape and color, fitted with an elongated shank for insertion in the body of the fishing lure to simulate eyes on the lure. In another preferred embodiment of the invention the shank is bent or curved and may be provided with rearwardly-extending barbs to retard removal of the shank from the body of the lure when the eyes are positioned in a desired location. The eyes may be constructed of plastic or other moldable material, as well as metal of selected size and shape and in a most preferred embodiment of the invention the eyes are molded from a plastic material and fitted with a shank opening for tightly receiving one end of the barbed or smooth shanks and mounting the shanks in the eyes. Each shank is then inserted in the soft plastic lure at a desired location to facilitate either decorating or enhancing the lifelike appearance of the lure.

Southerland is non-analogous art. A person skilled in the pertinent art of fishing lure weights would not be motivated to consult Southerland which is

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directed to removable eyes for fishing lures. Moreover, Southerland does not teach or suggest a modular weight for a fishing lure including at least one protrusion made of a material having a specific gravity greater than that of water, as is recited in claim 1 of the present application.

In order to function properly, the removable eyes disclosed in Southerland must be fabricated of a lightweight material having a specific gravity less than that of water. As shown in the figures of Southerland, the eyes of the fishing lures are located on the top portion of the fishing lure. If the eyes had a specific gravity greater than that of water, the fishing lure would tend to orient itself in an upside down position such that the eyes are below the body portion of the lure. In order to keep the fishing lure in its proper orientation, the fishing lure would need to include weights at a bottom portion thereof. No such weights are disclosed or shown in Southerland.

Accordingly, it cannot be maintained that the fishing lure disclosed in Southerland anticipates claim 1 of the present application. Moreover, because claims 2-4, 7-10, 12, 14, 15, 18 and 19 each ultimately depend from and thereby incorporate the limitations of claim 1, these dependent claims are not anticipated by Southerland for at least the reasons set forth for claim 1.

Claim 18 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Southerland. Claim 18 depends from and thereby incorporates the limitations of claim 1. The rejection is traversed and reconsideration is respectfully requested.

The Examiner acknowledges that Southerland does not disclose making a modular weight having a head and a protrusion made out of different materials. However, the Examiner argues that it would have been obvious to make the weight out of different materials since the selection of known materials is based on their suitability for the intended use.


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Regardless of whether or not it would have been obvious to construct a modular weight having a head and protrusion made of different materials, it has been demonstrated above that Southerland does not teach or suggest a modular weight for a fishing lure including at least one protrusion made of a material having a specific gravity greater than that of water, as is recited in claim 1 from which rejected claim 18 depends. It therefore follows that Southerland includes insufficient teaching when taken either alone or in combination with alleged knowledge of modular weights having a head and protrusion made of different materials to render claim 18 obvious.

In view of the foregoing, it is respectfully submitted that claims 1-4, 7-10, 12, 14, 15, 18 and 19 are in condition for allowance. All issues raised by the Examiner having been addressed, an early action to that effect is earnestly solicited.

No fees or deficiencies in fees are believed to be owed. However, authorization is hereby given to charge our Deposit Account No. 13-0235 in the event any such fees are owed.

Respectfully submitted,

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